



Attorney-General and Minister for Justice
Minister for Women and Minister for the Prevention of
Domestic and Family Violence

1 William Street Brisbane Q 4000
GPO Box 149 Brisbane Q 4001
Telephone +61 7 3719 7400
Email attorney@ministerial.qld.gov.au

In reply please quote: 589341/3; 5599300

6 May 2021

Ms Madeline Price
National Director
One Woman Project
info@onewomanproject.org

Dear Ms Price

I write to advise that the *Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2021* (the Act) received assent on 7 April 2021.

The Act amends the *Co-operatives National Law Act 2020*, the Criminal Code, the *Gaming Machine Act 1991*, the *Interactive Gambling (Player Protection) Act 1998*, the *Legal Profession Act 2007* (LPA), the *Liquor Act 1992*, the *Police Powers and Responsibilities Act 2000*, the *Racing Integrity Act 2016*, the *Wagering Act 1998* and the legislation mentioned in Schedule 1 for particular purposes.

A copy of the Act and extrinsic material can be accessed via the Queensland Legislation website at <https://www.legislation.qld.gov.au/view/html/asmade/act-2021-007>.

Criminal Code Amendments

Chapter 32 of the Criminal Code (Rape and sexual assaults) deals with sexual offending against any person where the absence of consent is an element of the offence.

The Act amends the Criminal Code to implement all five of the recommendations made by the Queensland Law Reform Commission (QLRC) in its 'Review of consent laws and excuse of mistake of fact'. In implementing these recommendations, the Act will codify the current law and confirm that:

- (a) silence alone does not amount to consent;
- (b) consent initially given can be withdrawn;
- (c) regard may be had to anything the defendant said or did to ascertain consent when considering whether the defendant was mistaken about whether the other person gave consent; and
- (d) a defendant's voluntary self-intoxication is not relevant to the reasonableness aspect of the excuse of mistake of fact.

The Act also implements the QLRC's recommendation to fix an inconsistency in the Criminal Code by clarifying that the definition of 'consent' in section 348 applies to all offences in Chapter 32, including the offence of sexual assault contained in section 352(1)(a).

The codification of existing case law with respect to consent and mistake of fact is an important measure for ensuring the law is accessible to all; assisting judges to provide properly informed directions to a jury and informing discussion and education to change attitudes and prevent sexual violence.

Legal Profession Act Amendments

The Act also amends LPA in relation to the Legal Practitioners' Fidelity Guarantee Fund (the Fund). The Fund, which is administered by the Queensland Law Society (QLS), was established to provide a source of compensation for persons who have lost trust money or property due to a dishonest default by a solicitor law practice.

The amendments will authorise the payment from the Fund of any claim not paid in full since the commencement of the Act due to the operation of the statutory caps on claims, and will also provide clearer guidance to the QLS as to when the statutory caps should be applied in the future. The Act also permits additional payments to be made from the Fund for programs to identify and prevent trust account defaults, and for educational programs to improve compliance and trust accounting systems within law practices.

Tackling Alcohol-Fuelled Violence

Additionally, the Bill implements the next stage of the Palaszczuk Government's legislative response to the two-year independent evaluation of the Tackling Alcohol-Fuelled Violence Policy.

The amendments will:

- (a) enhance the rigour of the ID scanning regime in safe night precincts by:
 - ensuring staff members responsible for controlling entry to regulated premises comply with the ID scanning requirements;
 - requiring licensee bans to be removed 30 days after a licence transfer (unless the new licensee requests the ban remain);
 - preventing inappropriate banning of investigators; and
 - streamlining notice requirements relating to ID scanning system errors and malfunctions;
- (b) increase the duration of initial police banning notices from 10 days to up to one month;
- (c) require three-yearly reviews of safe night precinct boundaries to ensure ongoing effectiveness; and
- (d) provide greater transparency and accountability around liquor and gaming machine licensing decisions.

Other regulatory amendments

The Act contains amendments to the *Wagering Act 1998* and the *Interactive Gambling (Player Protection) Act 1999* that codify the inducement restrictions of the National Consumer Protection Framework (NCPF) for online wagering. As a result, Queensland law now prohibits any wagering provider from offering an inducement to open an account or refer a friend to open an account, regardless of where in Australia the provider is licensed. NCPF restrictions on direct marketing have also been codified. Amendments to the *Racing Integrity Act 2016* provide additional inducement restrictions for racing bookmakers.

The *Wagering Act 1998* has also been amended to remove a mandatory rounding provision which has in the past inhibited Queensland's exclusive wagering provider from offering minimum dividends on short-priced favourites.

The Act also includes miscellaneous amendments that are aimed at supporting the integrity of Queensland's regulatory frameworks, by:

- (a) providing liquor accords and safe night precinct local boards with a legislative exemption from cartel behaviour, where they seek to implement controls on the price and/or supply of liquor for the purpose of harm minimisation; and
- (b) making a minor, technical amendment to the *Co-operatives National Law Act 2020* to rectify an unintended omission.

Commencement

The following provisions of the Act will commence on proclamation:

- (a) part 4, division 3 (amendments to the *Gaming Machine Act 1991* relating to the publication of decisions);
- (b) part 7, division 3 (amendments to the *Liquor Act 1992* relating to the publication of decisions; the requirement for licensee bans to be removed following a licence transfer; and periodic reviews of safe night precincts);
- (c) part 8 (amendment of the *Police Powers and Responsibilities Act 2000* relating to police banning notices); and
- (d) part 10, division 3 (amendments to the *Wagering Act 1998* relating to wagering dividends).

Commencement of the provisions on a date to be fixed by proclamation will allow time for relevant implementation activities to occur, including process and system changes that may be required.

The amendments to the LPA in relation to the statutory caps on claims, including those authorising payment of historical claims, will commence on 1 May 2021. The remaining amendments to the LPA will commence on 1 July 2021.

All other parts of the Act commenced on 7 April 2021, being the date of assent.

Transitional provisions

New section 754 of the Criminal Code (Offences charged before or after the commencement) provides that the amendments to the Criminal Code in the Act apply to a person charged with an offence after commencement, regardless of whether the charge is for an offence committed before or after commencement.

A transitional provision in new section 492 of the *Gaming Machine Act 1991* provides that the requirement to notify relevant persons and entities of a decision made for an application of significant community impact under new section 55FA does not apply in relation to applications that were made before commencement.

Transitional provisions in new section 272 of the *Interactive Gambling (Player Protection) Act 1999*, new section 297 of the *Racing Integrity Act 2016*, and new section 340F of the *Wagering Act 1998* ensure that the restrictions on inducements apply regardless of whether the customer's account was established before or after commencement.

(4)

A transitional provision in new section 890 of the *Police Powers and Responsibilities Act 2000* will ensure that former sections 602D (Duration of initial notice) and 602N (Internal review for police banning notices) will continue to apply in relation to police banning notices that are in effect immediately before commencement.

This legislation is only one component of the work needed to eliminate sexual violence from our community and ensure access to justice for women.

It is important that victims of sexual violence have confidence in every aspect of their interaction and engagement with the criminal justice system.

If you have any questions in relation to the above, I invite you to contact [Ms Adele Bogard](#), Acting Director, Strategic Policy, Department of Justice and Attorney-General, on (07) 3738 9834 or at adele.bogard@justice.qld.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Shannon Fentiman', written in a cursive style.

Shannon Fentiman MP

Attorney-General and Minister for Justice

Minister for Women and Minister for the Prevention of Domestic and Family Violence

Member for Waterford